

UNITED STATES BANKRUPTCY COURT

FILED

IN THE EASTERN DISTRICT OF MICHIGAN

2013 SEP 12 P 1:24

NORTHERN DIVISION – BAY CITY

US BANKRUPTCY COURT
E.D. OF MICHIGAN
BAY CITY

In re:

Case No. 13-22160-DOb

EDGAR J. DIETRICH,

Chapter 7

Debtor.

HON. Daniel S. Opperman

EDGAR J. DIETRICH
IN PRO PER
15832 Windmillpointe
Grosse Pointe Park, Michigan 48230
(313) 353-4708

**DEBTOR, EDGAR J. DIETRICH'S MOTION TO SET ASIDE JUDGEMENTS OF
AUGUST 30, 2013 AND AUGUST 26, 2013 AND STAY PROCEEDINGS**

NOW COMES Debtor, Edgar J. Dietrich, In Pro Per, and for his Motion to Set Aside Judgments of the Wayne County Circuit Court, in the civil suit *Tiernan v. Dietrich, et. al.*, Case Number 02-227087 NM, dated August 30, 2013 and August 26, 2013, and Stay Proceedings states as follows:

1. That on August 30, 2013, Judge Marvin Stempien, of the Wayne County Circuit Court, Case No. 02-227087 NM, entered an Order Regarding the Plaintiff's Emergency Motion for Order to Hold Edgar Dietrich and Le Chateau Art Gallery & Custom Framing, LLC ("Gallery") in Civil and/or Criminal Contempt, to Strike Defendant's Recently Filed Objections to Receivership Order and to Direct the Wayne County Sheriff to Assist the Receiver in Seizing the Gallery.
2. That said Order states that Dietrich, the Gallery, and all agents thereof are

directed to cease and desist from any further interference in the Receiver's exercise of his duties."

3. That said Order also states that "The Wayne County Sheriff is directed to assist the Receiver, Basil Simon, as necessary, to seize the Gallery and all property found therein or owned thereby and in the performance of duties spelled out in the August 26, 2013 Order by which the Receiver was appointed, and the local police force of Grosse Pointe Park is likewise directed to respect these orders and assist in any way necessary to see that they are carried out."

4. That said Order also directs that "Edgar Dietrich is ordered to leave and stay off of the premises of the Gallery, located at 15001 Charlevoix Street, Grosse Pointe, Park, MI 48230."

5. That on September 3, 2013, the Receiver, Basil Simon, did in fact seize the Gallery and all property found therein or owned thereby and owned by consignors and in the course of so doing, changed the locks on the premises.

6. That as a result of the Receiver, Basil Simon's actions, Le Chateau Gallery, which is a Michigan Limited Liability Company, with Eric Justin Dietrich, as its President, and owned by the Children's Family Irrevocable Trust, of which, Eric Justin Dietrich, is the Trustee, has been "shut down" and business operations immediately ceased thereby constituting an illegal seizure of property not owned by the Debtor, Edgar J. Dietrich.

7. That also as a result of the Receiver, Basil Simon's actions, the Debtor has literally been locked out of Le Chateau Art Gallery, with Eric Justin Dietrich, as its President, and owned by the Children's Family Irrevocable Trust, of which, Eric Justin Dietrich, is the Trustee, and has thereby been denied his constitutional right to earn a living and is suffering irreparable harm.

8. That Debtor, Edgar Dietrich, filed a Chapter 7 Bankruptcy Petition in the United

States Bankruptcy Court, Eastern District, Bay City Division, on August 21, 2013.

9. That Debtor's Bankruptcy Petition was assigned Case Number 13-22160.

10. That filing a Chapter 7 Bankruptcy Petition "automatically stays actions against the debtor or the debtor's property, including a civil lawsuit." 11 U.S.C. § 362.

11. That the Wayne County Circuit Court and Judge Stempien were made aware of the Debtor's bankruptcy petition at a Hearing conducted on August 26, 2013. At that time, Plaintiff's counsel, Anthony P. Patti, was advised by Judge Stempien that the Debtor's bankruptcy petition was in effect and instructed Plaintiff's counsel to prepare an Order in accordance with the automatic stay made and provided by the bankruptcy petition. Nevertheless Plaintiff's counsel scheduled a subsequent Hearing on August 30, 2013, of which the Debtor was not given Notice, and an Order was entered seizing Le Chateau Art Gallery.

12. That as a result of not being properly notified of the August 30, 2013 Hearing, the Debtor was not able to provide proofs to the Court; and thereby, ensuing the August 30, 2013 Order.

13. That the civil suit *Tiernan v. Dietrich, et. al.*, Case Number 02-227087 NM is automatically stayed under the provisions of Bankruptcy Code 11 U.S.C. § 362.

14. That MCR 2.612(C)(1)(a), allows for the setting aside of an Order based on "mistake, inadvertence, surprise, or excusable neglect."

15. That the aforementioned fact that Debtor, Edgar Dietrich, filed a Chapter 7 Bankruptcy Petition automatically stays any proceedings against the Debtor and/or property in possession of the Debtor and establishes that the entering of the Wayne County Circuit Court's Orders dated August 30, 2013 and August 26, 2013 must be stayed.

WHEREFORE, the Debtor, Edgar Dietrich, respectfully request that this Honorable Court set aside the Judgments of the Wayne County Circuit Court, in the civil suit *Tiernan v.*

Dietrich, et. al., Case Number 02-227087 NM, dated August 30, 2013 and August 26, 2013,
under Bankruptcy Code 11 U.S.C. § 362 and stays proceedings in the civil suit *Tiernan v.*
Dietrich, et. al., Case Number 02-227087 NM pending the resolution of the Debtor's Bankruptcy
Petition.

Respectfully submitted,

Dated: 9-11-13


EDGAR J. DIETRICH
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UNITED STATES BANKRUPTCY COURT
IN THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION – BAY CITY

In re: **Case No. 13-22160-DOB**
EDGAR J. DIETRICH, **Chapter 7**
Debtor. **HON. Daniel S. Opperman**

EDGAR J. DIETRICH
IN PRO PER
15832 Windmillpointe
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**ORDER GRANTING DEBTOR EDGAR J. DIETRICH'S MOTION
TO SET ASIDE JUDGEMENTS OF THE WAYNE COUNTY CIRCUIT COURT,
CIVIL ACTION SUIT *TIERNAN V. DIETRICH, ET. AL.*, CASE NUMBER 02-
227087 NM OF AUGUST 30, 2013 AND AUGUST 26, 2013 AND STAY
PROCEEDINGS**

At a session of said Court, held in the City of Bay City,
County of Bay City, State of Michigan
On September 12, 2013

Hon. _____
Daniel S. Opperman

This matter having come before this Honorable Court upon Debtor's Motion to Set Aside Judgments of the Wayne County Circuit Court, Civil Action Suit *Tiernan v. Dietrich, et. al.*, Case Number 02-227087 NM, of August 30, 2013 and August 26, 2013 and Stay Proceedings and this Court having considered the arguments and evidence presented and being otherwise fully advised;

IT IS HEREBY ORDERED that the Judgments of the Wayne County Circuit Court, Civil Action Suit *Tiernan v. Dietrich, et. al.*, Case Number 02-227087 NM, of August 30, 2013 and August 26, 2013 are set aside and a stay in said proceedings against the Debtor, Edgar J. Dietrich are stayed until the pending outcome of his bankruptcy petition.

IT IS HEREBY FURTHER ORDERED that the Plaintiffs in the Wayne County Circuit Court, Civil Action Suit *Tiernan v. Dietrich, et. al.*, Case Number 02-227087 NM are enjoined from enforcing the receivership of Le Chateau Art Gallery & Custom Framing, LLC, and ordered to relinquish Le Chateau Art Gallery & Custom Framing, LLC to its legal and rightful owner with Eric Justin Dietrich, as its President, and owned by the Children's Family Irrevocable Trust, of which, Eric Justin Dietrich, is the Trustee.

SO ORDERED.

Hon. _____
Daniel S. Opperman